

(2) Major modification of an item, piece of equipment, or materiel which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down; and

(ii) Outmoded parts are replaced; and

(iii) The item or equipment is rebuilt or reassembled; and

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(3) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in paragraphs (b)(1) and (2) of this section, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for the work described in this paragraph (b)(3) is subject to the Service Contract Act. Examples of such work include:

(i) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(ii) Repair of typewriters and other office equipment (see §4.123(e));

(iii) Repair of appliances, radios television, calculators, and other electronic equipment;

(iv) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in paragraphs (b)(3)(i), (ii), and (iii) of this section; and

(v) Reupholstering, reconditioning, repair, and refinishing of furniture.

(4) Application of the Service Contract Act or the Walsh-Healey Act to any similar type of contract not decided above will be decided on a case-by-case basis by the Administrator.

#### §4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a Government bill of lading citing the published tariff rate. An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act and is in accordance with applicable regulations governing such rates. See §4.123(d). However, only contracts principally for the carriage of "freight or personnel" are exempt. Thus, the exemption cannot apply where the principal purpose of the contract is packing, crating, handling, loading, and/or storage of goods prior to or following line-haul transportation. The fact that substantial local drayage to and from the contractor's establishment (such as a warehouse) may be required in such contracts does not alter the fact that their principal purpose is other than the carriage of freight. Also, this exemption does not exclude any contracts for the transportation of mail from the application of the Act, because the term *freight* does not include the mail. (For an administrative exemption of certain contracts

#### **§4.119**

with common carriers for carriage of mail, see §4.123(d).)

#### **§4.119 Contracts for services of communications companies.**

The Act, in paragraph (4) of section 7, exempts from its provisions “any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934.” This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

#### **§4.120 Contracts for public utility services.**

The Act, in paragraph (5) of section 7, exempts from its provisions “any contract for public utility services, including electric light and power, water, steam, and gas.” This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration co-operatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948, 89th Cong., 1st sess., p. 4)

#### **§4.121 Contracts for individual services.**

The Act, in paragraph (6) of section 7, exempts from its provisions “any employment contract providing for direct services to a Federal agency by an individual or individuals.” This exemption, which applies only to an “employment contract” for “direct services,” makes it clear that the Act’s application to Federal contracts for services is in-

#### **29 CFR Subtitle A (7-1-01 Edition)**

tended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act’s provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in §4.113, such a contract would be outside the general coverage of the Act if only the contractor’s individual services would be furnished and no service employee would in any event be used in its performance.

#### **§4.122 Contracts for operation of postal contract stations.**

The Act, in paragraph (7) of section 7, exempts from its provisions “any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations.” The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, 89th Cong., 1st sess., p. 1).

#### **§4.123 Administrative limitations, variances, tolerances, and exemptions.**

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to “provide such reasonable limitations” and to “make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than §10), but